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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,951	03/16/2004	Christopher L. Schutte	TI-34807.1	4211
23494 7590 01/27/2009 TEXAS INSTRUMENTS INCORPORATED P O BOX 655474, M/S 3999 DALLAS, TX 75265				
EXAMINER				
MACARTHUR, SYLVIA				
ART UNIT		PAPER NUMBER		
1792				
NOTIFICATION DATE		DELIVERY MODE		
01/27/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspto@ti.com

# Office Action Summary

**Application No.**

10/802,951

**Applicant(s)**

SCHUTTE ET AL.

**Examiner**

Sylvia R. MacArthur

**Art Unit**

1792

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 October 2008.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 12 and 14-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 12 and 14-20 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 16 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant failed to provide arguments against the use of the prior art of Hennells. Thus the rejections are maintained. Additionally, applicant has a co-pending application 11/856,307 which teaches or fairly suggests the present invention.

### ***Double Patenting***

2. Claims 12 and 14-20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 12 of Schutte et al (copending Application No. 11/856,307) in view of Hennells (US 3,304,527).

This is a provisional obviousness-type double patenting rejection.

Schutte et al claims a diverter valve comprising a housing, a valve ring, and a plurality of tubes connected to an internal bottom surface wherein the valve ring covers the plurality of tubes when a vacuum is applied to said housing. Schutte et al fails to claim an opening.

W.E. Hennells teaches a safety check and exhaust valve (diverter valve) comprising a housing (valve chamber 24) see Figs. 1 and 2 wherein the bottom and top surface. See the opening in the Figures of Hennells, element 20.

Regarding the type of fluid used to move the internal top surface, the apparatus is to a diverter valve which is inherently capable of using water and/or nitrogen.

The motivation to modify the claims of Schutte to include the teachings of Hennells is that it enhances the flow path of the diverter valve allowing for greater control of flow. Thus, it would have been obvious for one of ordinary skill in the art at the time of the claimed invention

to modify the invention of Schutte et al to include the teachings of Hennells in order to enhance the flow path of the diverter valve allowing for greater control of flow.

Regarding claim 13: If the flow is left to right, the plurality of outlet tubes is depicted in Figs. 1 as 20 and 36.

Regarding claim 14: Valve chamber 38 anticipates an aperture.

Regarding claims 15-20: The structure of the valve of Hennells comprises the structure as depicted in Figs. 1 and 2 to perform the movement recited via the sliding piston 22.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 12 and 14-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Hennells (US 3,034,527).

W.E. Hennells teaches a safety check and exhaust valve (diverter valve) comprising a housing (valve chamber 24) see Figs. 1 and 2 wherein the bottom and top surface. See the opening in the Figures of Hennells, element 20.

Regarding the type of fluid used to move the internal top surface, the apparatus is to a diverter valve which is inherently capable of using water and/or nitrogen.

Regarding claim 13: If the flow is left to right, the plurality of outlet tubes is depicted in Figs. 1 as 20 and 36.

Regarding claim 14: Valve chamber 38 anticipates an aperture.

Regarding claims 15-20: The structure of the valve of Hennells comprises the structure as depicted in Figs. 1 and 2 to perform the movement recited via the sliding piston 22.

***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sylvia R. MacArthur whose telephone number is 571-272-1438. The examiner can normally be reached on M-Th during the hours of 8 a.m. and 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Parviz Hassanzadeh can be reached on 571-272-1435. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

January 21, 2009

/Sylvia R MacArthur/  
Primary Examiner, Art Unit 1792